

Bankruptcy (Ireland) Amendment Bill.

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Clause.

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SCHEDULES.

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B I L L
FOR

The amendment of the Law of Bankruptcy in Ireland.

A.D. 1871.

WHEREAS it is expedient to amend the laws relating to bankruptcy and insolvency in Ireland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall be construed together with so much of "The Irish Bankrupt and Insolvent Act, 1857," as is not hereby altered or repealed, as one Act, and may be cited for all purposes as "The Bankruptcy (Ireland) Amendment Act, 1871."

2. This Act shall not, except in so far as same is expressly provided, apply to England or Scotland.

3. This Act shall not come into operation until the *first day of January one thousand eight hundred and seventy-six*, which date is herein-after referred to as the commencement of this Act.

4. In this Act, if not inconsistent with the context, the following terms shall have the meanings herein-after respectively assigned to them; that is to say:

"The Court" shall mean the Court of Bankruptcy and Insolvency in Ireland, as constituted under "The Irish Bankrupt and Insolvent Act, 1857," and as altered in its title by this Act, and shall mean also and include any judge or judges of the Court of Bankruptcy in Ireland constituting and acting as a Court under the said Act or this Act:

"Prescribed" shall mean prescribed by rules of court to be made as in this Act provided:

"Arranging debtor" shall mean a person who has presented a petition for arrangement with his creditors, under the provisions of "The Irish Bankrupt and Insolvent Act, 1857," as amended by this Act;

"The said Act" shall mean "The Irish Bankrupt and Insolvent Act, 1857;"

"Trader" shall mean any one of the persons mentioned in section ninety of "The Irish Bankrupt and Insolvent Act, 1857;"

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Repeal of
portion of
20 & 21 Vict.
c. 60.

"Secured creditor" shall mean any creditor holding any mortgage, charge, or lien on the debtor's estate, or any part thereof, as security for a debt due to him.

5. From and after the commencement of this Act the several sections of "The Irish Bankrupt and Insolvent Act, 1857," mentioned in the schedule (A.) hereto annexed, and the several parts of sections in the said Act relating to the practice and procedure and powers of the Court in insolvency, and to the assignees, creditors, debts, property, allowances and offences of insolvents, shall be repealed, except so far as said sections, and parts of sections, or any of them, repeal any former Act, or part of an Act, and except also so far as may be necessary for the purpose of supporting and continuing any proceedings taken or to be taken after the commencement of this Act on any petition or order in bankruptcy or insolvency, filed or made before the commencement of this Act: Provided always, that such repeal shall not be construed to lessen or affect any right to which any person may, at the time of such repeal, be entitled under the said sections, or any of them; or to lessen any liability or obligation then existing thereunder; or to affect any principle or rule of law derived from any of the said sections; nor shall this repeal interfere with the prosecution, or affect the course of any legal proceeding pending in bankruptcy or insolvency, or otherwise, under any of said sections, before the commencement of this Act; but, subject to the provisions of this Act, and "The Debtor's Act (Ireland), 1871," such proceedings shall be prosecuted as if this Act had not been passed; nor shall this repeal interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty or forfeiture incurred under any section of the said Act hereby repealed.

Change in
title of
court

6. From and after the commencement of this Act "The Court of Bankruptcy and Insolvency in Ireland," as constituted by the said Act, shall be called "The Court of Bankruptcy in Ireland," and the judges of the said Court and their successors shall be called the Judges of the Court of Bankruptcy.

The chief registrar shall provide a seal on which shall be engraven the style of the Court, as so altered, and every such seal shall be kept by the chief registrar in trust, for the purposes of the Court, and such seal shall be the seal of the Court.

Judges
may sit at
chambers.

7. The judges may sit at chambers for the despatch of such part of the business of their courts as can, without detriment to the public advantage, arising from the discussion of questions in open court, be heard in chambers; and when sitting at chambers they

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shall have in all respects like power and jurisdiction as when sitting in court. A.D. 1871.

8. The present assistant registrars of the Court and their successors shall be called henceforth "Registrars of the Court of Bankruptcy."

Change in title of assistant registrars.

9. And whereas, by the fortieth section of the said Act, it was (amongst other things) enacted, that the salary to be paid to the chief registrar should in no case exceed eight hundred pounds per annum: And whereas, by the forty-second section of the said Act it was (amongst other things) enacted, that it should be lawful for the Lord Chancellor to direct that a salary not exceeding four hundred pounds per annum should be paid to each assistant registrar: And whereas it is expedient that there should be power to increase the said salaries in the event of their being deemed insufficient remuneration for the duties which such chief registrar or the registrars are required to perform: Be it therefore enacted, that it shall be lawful for the judges of the Court, if it shall appear to them that the salary of such chief registrar or of said registrars is insufficient, with the approval of the Lord Chancellor, to represent the circumstances to the Commissioners of Her Majesty's Treasury, who are hereby empowered, if they shall see fit, to increase such salaries to such amounts as to them shall seem proper.

Power to increase salaries of chief registrar and registrars.

10. The present deputy assistant to the chief registrar, and his successors, shall be called henceforth "deputy registrar."

Change in title of deputy assistant registrar. Principal assistant in bankruptcy.

11. Arthur F. Lloyd, Esq., the present assistant in bankruptcy, and his successors, shall be called henceforth "principal assistant in bankruptcy."

Deputy registrar and principal assistant to tax costs.

12. The deputy registrar and the principal assistant in bankruptcy shall, in addition to the duties at present performed by them respectively, and such other duties as they may respectively from time to time be directed to perform by the Court, tax all such bills of fees, costs, charges, and disbursements as may be referred to them respectively for taxation, but such taxation shall be subject to review by the Court. They shall also settle all bills of charges, fees, and disbursements of any auctioneer, appraiser, broker, valuer, or accountant employed by any assignee or trustee or messenger for business done under such employment, subject to review by the Court; and the amount of the bills so settled, and no more, shall be paid to or recoverable by such auctioneer, appraiser, broker, valuer, or accountant.

Additional salaries to deputy registrar and principal assistant.

13. The deputy registrar shall for such additional duties, and in addition to any other salary to which he may be entitled, receive an additional salary of pounds per annum. The principal

A.D. 1871.—*assistant in bankruptcy shall for such additional duties, and in addition to any other salary to which he may be entitled, receive an additional salary of pounds per annum.*

Additional persons may be appointed to take affidavits.

14. Affidavits to be made or used in any matter or proceeding under the said Act as amended by this Act shall and may be sworn before such officer or officers of the Court as the Court shall by general order from time to time direct, as well as before the several persons mentioned in section three hundred and sixty-six of the said Act; and every such officer as aforesaid is hereby authorised and required to administer the oath upon every such affidavit. 10

Patrick Walshe and Arthur Edmond Morris to be deputy official assignees and officers of the Court.

15. Patrick Walshe, the present principal assistant in the office of Charles Henry James, official assignee, and Arthur Edmond Morris, the present principal assistant in the office of Lucas Henry Decring, official assignee, shall be deemed to be officers of the court, and be styled respectively "deputy official assignees;" they shall 15 respectively give such security, and perform such duties, and be subject to such rules, as may from time to time be directed or made by such official assignees respectively or by the court; they shall not be removed from the situation they now respectively hold in the said offices of the said official assignees or their successors, 20 neither shall their present salaries be diminished, without the consent of the court: Provided, however, that nothing in this section shall be construed to interfere hereafter with the rights of the official assignees to appoint or remove their deputies or other assistants, as vacancies shall occur, or to give to the said Patrick 25 Walshe or Arthur Edmond Morris any claim or right to superannuation allowance or compensation, in the event of their hereafter retiring from said situations respectively or being removed therefrom, or in the event of the said situations or either of them being abolished. 30

Abolition of distinction between traders and non-traders.

16. From and after the commencement of [this Act], the provisions of the said Act, save so far as same have been repealed, altered, or amended by this Act, shall apply to all debtors, whether traders or not, and the said Act shall henceforth be read and construed as if the word "debtor" were inserted throughout the said Act instead 35 of the word "trader." 30

Debt of petitioning creditor.

17. A single creditor, or two or more creditors, if the debt due to such single creditor or the aggregate amount of debts due to such several creditors from any debtor amount to a sum of not less than fifty pounds, may present a petition to the Court, praying that 40 the debtor be adjudged a bankrupt.

Acts of bankruptcy.

18. The following acts or defaults shall be herein-after deemed to be and included under the expression "acts of bankruptcy":

(1.) That the debtor has, in Ireland or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally : A.D. 1871.

(2.) That the debtor has, in Ireland or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof :

(3.) That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely, departed out of Ireland; or being out of Ireland remained out of Ireland; or being a trader departed from his dwelling house, or otherwise absented himself; or begun to keep house; or suffered himself to be outlawed :

No debtor not being a trader who shall be abroad at the time of the passing of this Act shall be deemed to remain abroad with intent to defeat or delay his creditors until the expiration of six months after the passing of this Act.

(4.) That the debtor has filed in the Court a declaration of insolvency pursuant to the provisions of the said Act as amended by this Act :

(5.) That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than *Twenty pounds* has in the case of a trader been levied by seizure and sale of his goods :

(6.) That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due, of an amount of not less than *fifty pounds*, and the debtor being a trader has for the space of seven days, or not being a trader has for the space of three weeks, succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same :

(7.) That the debtor has filed a petition for arrangement with his creditors under the provisions of the said Act as amended by this Act, and that such petition has been dismissed.

The debt of the petitioning creditor must be a liquidated sum due at law or in equity, and must not be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of the debtor being adjudicated a bankrupt, or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on an application being made by the assignees

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or trustee within the prescribed time after the date of adjudication, give up his security to such assignees or trustee for the benefit of the creditors upon payment of such estimated value.

Debt of petitioning creditor of a non-trader must be contracted after the passing of the Act.

Proceedings in relation to a debtor's summons.

19. The debt of the petitioning creditor of any debtor not being a trader, and not being at the time of the commencement of this 5 Act a trader against whom such creditor would have been entitled to obtain a vesting order in insolvency if this Act had not been passed, must be a debt contracted after the *passing of this Act*.

20. A debtor's summons may be granted by the Court on a creditor proving to its satisfaction that a debt sufficient to support a 10 petition in bankruptcy is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt, after using reasonable efforts to do so. The summons shall be in the prescribed form. It shall state that in the event of the debtor failing to pay the sum specified in the summons, 15 or to secure or compound for the same to the satisfaction of the creditor, a petition may be presented against him, praying that he may be adjudged a bankrupt. The summons shall have an endorsement thereon to the like effect, or such other prescribed endorsement as may be best calculated to indicate to the debtor the nature of the 20 document served upon him, and the consequences of inattention to the requisitions therein made.

Any debtor served with a debtor's summons may apply to the Court, in the prescribed manner and within the prescribed time, to dismiss such summons, on the ground that he is not indebted to the 25 creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting a bankruptcy petition against him; and the Court may dismiss the summons, with or without costs, if satisfied with the allegations made by the debtor, or it may, upon such security (if any) being given as the 30 Court may require for payment to the creditor of the debt alleged by him to be due, and the costs of establishing such debt, stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt; and such trial shall be had either before the Court or before any other court of competent 35 jurisdiction.

Forms as to traders to be applicable to all debtors.

21. Save as otherwise provided by this Act, all the forms set forth in the several schedules to the said Act in reference to traders and their estates and effects, but subject to be varied by general orders, shall be applicable to all debtors who are not traders, and their 40 estates and effects under this Act; but no rule, order, warrant, summons, or other proceeding or document whatsoever required by the said Act, or by this Act, to be in a form given in the said

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schedules respectively, or any of them, or to be given by any general order under this Act, shall be invalidated by reason of want of form, or omission, or variance therein, if such want of form, omission, or variance shall not, in the opinion of the court before which the same shall be brought, be calculated to mislead or prejudicially affect any person.

22. The Lord Chancellor shall, with the sanction of the Treasury, *Scales of fees.* from time to time prescribe a scale of fees to be charged for any business done by any Court or officer thereof under the said Act as amended by this Act or under this Act; and the Treasury shall direct whether the same shall be imposed by stamp or otherwise, and by whom and in what manner the same shall be collected, accounted for, and appropriated, and whether any and what remuneration shall be allowed to any person performing any duties under this Act.

When prescribing any such scale of fees, it shall be lawful for the Lord Chancellor, with the sanction of the Treasury, to vary, reduce, or abolish all or any of the stamp duties in lieu of fees mentioned and enumerated in schedule (Z.) to the said Act annexed, and to substitute one or more fee or fees, stamp or stamps, in lieu thereof.

23. From and after the commencement of this Act, the jurisdiction, authorities, and functions of the chairmen of quarter sessions in insolvency matters shall cease; provided that all matters of insolvency pending at the time of the commencement of this Act before any of the said chairmen, shall proceed and be completed before them as if this Act had not been passed.

24. All matters of insolvency pending at the commencement of this Act in the Court shall proceed and be completed in the said Court, and the judges of the said Court shall for the purpose of proceeding with and completing such pending matters have the same jurisdiction, powers, and authorities possessed by them at the time of the commencement of this Act.

25. For the purpose of winding up as expeditiously and conveniently as may be all petitions, matters, and things relating to any insolvency which shall have been presented to or depending in the Court or in any of the Courts of Quarter Sessions in Ireland at the time of the commencement of this Act, it shall be lawful for the judges of said Court, or one of them, or the chairman of any Court of Quarter Sessions respectively, to summon, as they or he shall deem fit, all or any of the parties to such petitions, matters, or things, or their solicitors, and thereupon to give such directions, and make such orders as may be necessary for the purpose of settling

A.D. 1871. and winding up the same, and to proceed for the purposes aforesaid in the absence of the parties or solicitors neglecting or refusing to attend such summons.

Recognizances of parties extended. **26.** Every recognizance which may, at the passing of this Act, have been entered into by any person with conditions that the insolvent therein mentioned shall duly appear at the time and place therein mentioned, shall extend to bind the person who may have entered into the same, in case the insolvent debtor therein mentioned shall not at the time appointed in such recognizance duly appear before the Court by which the petition or matter of such insolvent is heard in pursuance of the said Act or this Act, and on every adjourned hearing, or shall not abide by the final judgment of such Court.

Records of Court. **27.** The records and proceedings of every kind in insolvency matters in the Court of Bankruptcy and Insolvency at the time of the commencement of this Act shall be records and proceedings of the Court, and shall be kept in such manner as they now are, subject to alteration by any general order.

Chief clerk, clerks, and officers in insolvency. **28.** The Chief Clerk in Insolvency and other persons at the commencement of this Act discharging duties connected with insolvency business, shall, until the Court, with the approbation of the Lord Chancellor, otherwise directs, continue to discharge the same duties as at the commencement of this Act, and shall have the same relative rank, and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries as heretofore. If a vacancy happens in the place of such chief clerk, or of any clerk or person to whom this section relates, the Court may, if it thinks fit, with the approbation of the Lord Chancellor, and with the concurrence of the Commissioners of Her Majesty's Treasury, employ a fit person temporarily to discharge the duties of that place; and in the event of the duties of such chief clerk or of any such clerk or person now attached to the Court ceasing, he shall, if the Court, with the approbation of the Lord Chancellor, think fit, be appointed to discharge similar or other duties in the Court of Bankruptcy in case his services are required in that behalf, and shall receive such salary as the Lord Chancellor, with the sanction of the Treasury, may from time to time direct; and if not so appointed, his office shall be abolished.

Compensation to officers. **29.** The Commissioners of Her Majesty's Treasury may, on the petition of any person whose office or employment is abolished by or under this Act, on the commencement of this Act or on any other event, inquire whether any, and if any what compensation ought to be made to the petitioner, regard being had to the condi-

tions on which his appointment was made, the nature of his office or employment, and the duration of his service; and if they think that his claim to compensation is established, may award to him out of moneys to be provided by Parliament such compensation, 5 by moiety or otherwise, as under the circumstances of the case they think just and reasonable; provided, that when any such person held his office during good behaviour, or during good behaviour subject only to removal by order of the Court for sufficient cause therein specified, or by writing, under the hand of the judges 10 of the Court, without any cause being therein specified, the Court may, with the approval of the Commissioners of the Treasury, award under special circumstances an amount equal to the salary of any such person; and in every other case the sum awarded shall not be less than two thirds of the salary of such person.

15 **30.** Nothing in this Act shall deprive any person discharging duties connected with insolvency in the Court of Bankruptcy and Insolvency of any benefit to which at or after the commencement of this Act he is or may become entitled by virtue of any Act relating to superannuation allowancees; and the service of any such person 20 in the Court shall, in relation to superannuation allowance, retiring pension, and compensation annuity on abolition of office, be equivalent to service in the said Court of Bankruptcy and Insolvency.

31. A partnership association, or company corporate registered under "The Companies Act, 1863," shall not be adjudged bankrupt 25 under this Act or the said Act.

32. If a person having privilege of Parliament commits an act of bankruptcy he may be dealt with under this Act in like manner as if he had not such privilege.

33. If a person, being a member of the Commons House of 30 Parliament, is adjudged bankrupt, he shall be and remain during one year from the date of the order of adjudication incapable of sitting and voting in that House, unless within that time either the order is annulled, or the creditors who prove debts under the bankrupt are fully paid or satisfied.

35. Provided that such debts (if any) as are disputed by the bankrupt shall be considered, for the purpose of this section, as paid or satisfied if within the time aforesaid he enters into a bond, in such sum and with such securities as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning 40 such debts, together with any costs to be given in such proceedings.

34. If within the time aforesaid the order of adjudication is not annulled, and the debts of the bankrupt are not fully paid or satis-

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Saving for
right to
superannua-
tion allow-
ances, &c.Exclusion
of companies
and large
partnerships.Privilege of
Parliament
not to pre-
vent adjudica-
tion in
bankruptcy.
Vacating of
seat in House
of Commons.Certificate of
bankruptcy
to be given

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by the Court

to the

Speaker,

Speaker to

issue new

writ.

Provisions
of 24 Geo. 3,
sua. 2, c. 25,
extended
to case of
bankruptcy.Disposition
of estates
tad under
bankrup-
tacy.Proof for
proportionate part
of rent and
other pay-
ments falling
due at fixed
periods.

6d as aforesaid, then the Court shall, immediately after the expiration of that time, certify the same to the Speaker of the House of Commons, and thereupon the seat of such member shall be vacant.

35. Where the seat of a member so becomes vacant, the Speaker during a recess of the House, whether by prorogation or by adjournment, shall, forthwith after receiving such certificate, cause notice thereof to be published in the London Gazette; and after the expiration of six days after such publication shall (unless the House has met before that day, or will meet on the day of the issue), issue his warrant to the Clerk of the Crown to make out a new writ for electing another member in the room of the member whose seat has so become vacant.

36. The powers of the Act of the twenty-fourth year of the reign of King George the Third, chapter twenty-six, "to repeal so much of two Acts made in the tenth and fifteenth years of the reign of His present Majesty as authorizes the Speaker of the House of Commons to issue his warrant to the Clerk of the Crown for making out writs for the election of members to serve in Parliament in the manner therein mentioned; and for substituting other provisions for the like purposes," so far as such powers enable the Speaker to nominate and appoint other persons, being members of the House of Commons, to issue warrants for the making out of new writs during the vacancy of the office of Speaker, or during his absence out of the realm, shall extend to enable him to make the like nomination and appointment for issuing warrants, under the like circumstances and conditions, for the election of a member in the room of any bankrupt member whose seat becomes vacant under this Act.

37. The powers and authorities conferred upon Commissioners of Bankruptcy by such of the clauses of an Act passed in the fourth and fifth years of the reign of King William the Fourth, intituled "An Act for the abolition of fines and recoveries and for the substitution of more simple modes of assurance in Ireland," as were by the three hundred and fortieth section of the said Act extended and made applicable to proceedings in bankruptcy under a petition of bankruptcy, and to proceedings in insolvency under a petition of insolvency, shall be vested in the judges of the Court, and shall be exercised by them, or one of them.

38. In all cases in which any bankrupt or arranging debtor is liable to pay rent or other payment falling due at fixed or stated periods, and the adjudication of bankruptcy or presentation of the petition for arrangement, shall happen at any time other than one of such fixed or stated periods, it shall be lawful for the person

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entitled to such rent or other payment to prove for a proportionate part thereof, up to the day of the adjudication of bankruptcy or presentation of the petition for arrangement, in such manner as if the said rent or payment grew due from day to day, and not at such fixed or stated periods as aforesaid.

39. If any bankrupt or arranging debtor shall have contracted before the filing of a petition against or by him any debt payable by way of instalments, the creditor may prove for the amount of such instalments remaining unpaid at the time of such petition.

Proof for debts payable by instalments.

40. If any bankrupt, at the time of adjudication, or any arranging debtor, at the time of the presentation of his petition, shall be liable by reason of any contract or promise, either express or implied, to a demand in the nature of damages which have not been and cannot be otherwise liquidated or ascertained, it shall be lawful for the Court to direct such damages to be assessed by a jury, either before itself or in a court of law, and to give all necessary directions for such purpose, and the amount of damage, when assessed, shall be provable as if a debt due at the time of the bankruptcy or the arrangement: Provided, that in case all necessary parties agree, the Court shall have power to assess such damages without the intervention of a jury or a reference to a court of law.

Proof in respect of unliquidated damages.

41. If any bankrupt, at the time of adjudication, or any arranging debtor, at the time of the presentation of his petition, be liable, by reason of any contract or promise, to pay premiums on any policy of insurance, or any other sums of money, whether yearly or otherwise, or to repay to or indemnify any person against any such payments, the person entitled to the benefit of such contract or promise may, if he think fit, apply to the Court to set a value upon his interest under such contract or promise, and the Court is hereby required to ascertain the value thereof, and to admit such person to prove the amount so ascertained, and to receive dividends thereon.

Proof for premiums upon policies of insurance.

42. If any bankrupt, at the time of adjudication, or any arranging debtor, at the time of the presentation of his petition, is liable in respect of distinct contracts, as member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that such firms are, in whole or in part, composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts against the properties respectively liable upon such contracts.

Proof in respect of distinct contracts.

43. When a bankrupt is in receipt of a salary or income, other than is mentioned in the three hundred and nineteenth section of the said Act, the Court may, from time to time, make such order as it thinks just for the payment of such salary or income, or of

Appropriation of portion of salary to creditors.

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Avoidance of voluntary settlements. 44. Any settlement of property made by a trader after the commencement of this Act, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of such settlement, be void as against the assignees or trustee of such bankrupt under the said Act or this Act, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such assignees or trustee. Any covenant or contract made by a trader after the commencement of this Act, in consideration of marriage, for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his assignees or trustee appointed under the said Act or this Act.

"Settlement" shall for the purposes of this section include any conveyance or transfer of property.

Avoidance of fraudulent preferences. 45. From and after the commencement of this Act, every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same become bankrupt within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the assignees or trustee of such bankrupt appointed under the said Act or this Act; but this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration.

46. Where the goods of any trader have been taken in execution in respect of a judgment or civil bill decree for a sum exceeding twenty pounds, and sold, the sheriff shall retain the proceeds of such sale in his hands for a period of fourteen days, and upon notice being served on him within that period of a bankruptcy petition having been presented by or against such trader, shall hold the proceeds of such sale, after deducting expenses, on trust to pay the same to the assignees or trustee; but if no notice of such petition having been presented be served on him within such period of fifteen days, or if such notice having been served, the trader by or against whom the petition has been presented is not adjudged a bankrupt on such petition, or on any other petition of which the sheriff has notice, he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of a bankruptcy petition been served on him.

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Proceeds of
sale and
seizure of
goods.

47. Subject and without prejudice to the provisions of this Act relating to the proceeds of the sale and seizure of goods of a trader, and to the provisions of this Act avoiding certain settlements, and avoiding, on the ground of their constituting fraudulent preferences, certain conveyances, charges, and judicial proceedings, the several transactions by and in relation to the property of a bankrupt which are protected by the said Act, shall be valid notwithstanding any prior act of bankruptcy.

Transactions
protected by
the said Act
to remain
valid.

48. When a bankrupt has passed his final examination in a bankruptcy heard before the Court under the provisions of the said Act as amended by this Act, or when a bankrupt wound up by a trustee and a committee of inspection as herein-after provided has closed, or at any time during its continuance with the assent of the creditors testified by a special resolution, the bankrupt may apply to the Court for a certificate of conformity; but such certificate shall not be granted unless it is proved to the Court that one of the following conditions has been fulfilled:

Certificate of
conformity.

1. In a bankruptcy heard before the Court under the provisions of the said Act as amended by this Act, that a dividend of not less than *five shillings* in the pound has been paid, or that his bankruptcy or the failure to pay *five shillings* in the pound has in the opinion of the Court arisen from circumstances for which the bankrupt cannot justly be held responsible.
2. In a bankruptcy wound up by a trustee and a committee of inspection, either that a dividend of not less than *five shillings* in the pound has been paid out of his property, or might have been paid except through the negligence or

[109.]

B 3

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fraud of the trustee, or that a special resolution of his creditors has been passed to the effect that his bankruptcy or the failure to pay five shillings in the pound has in their opinion arisen from circumstances for which the bankrupt cannot be held responsible, and that they desire that a certificate should be granted to him; and the Court may suspend for such time as it deems to be just, or withhold altogether, the certificate in the circumstances following:

1. If a prosecution has been commenced against the bankrupt in pursuance of the provisions relating to the punishment of fraudulent debtors contained in the Debtors Act (Ireland), 1871, in respect of any offence alleged to have been committed by him against the last-mentioned Act:
2. If in the case of a bankruptcy heard before the Court under the provisions of the said Act as amended by this Act, the Court is of opinion that the bankrupt has not made a full disclosure and discovery of his estate and effects or has made default in giving up to his creditors the property which he is required by the said Act or this Act to give up:
3. If in the case of a bankruptcy wound up by a trustee and a committee of inspection, it appears to the Court on the representation of the creditors made by special resolution, of the truth of which representation the Court is satisfied, or by other sufficient evidence that the bankrupt has not made a full disclosure and discovery of his estate and effects, or has made default in giving up to his creditors the property which he is required by the said Act or this Act to give up.

20

49. The certificate of conformity shall be in writing under the seal of the Court, and the hand of one of the judges of the Court, and shall certify that the bankrupt has made a full discovery of his estate and effects, and in all things conformed, and that so far as the Court can judge there does not appear any reason to question the truth or falseness of such discovery; and shall be in the form contained in schedule (B.) to this Act annexed, or to the like effect, and notice of the allowance of such certificate shall be advertised in the Dublin Gazette in such manner as may be directed by any general order to be made in pursuance of this Act.

Effect of certificate.

50. The certificate of conformity shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust, nor from any debt or liability whereof he has obtained forbearance by any fraud, but it shall release the bankrupt from all other debts provable under the bankruptcy, with the exception of—

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- (1.) Debts due to the Crown:

- (2.) Debts with which the bankrupt stands charged at the suit of the Crown, or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence;

5 And he shall not be discharged from such excepted debts unless the Commissioners of the Treasury certify in writing their consent to his being discharged therefrom.

10 A certificate of conformity shall be sufficient evidence of the bankruptcy and of the validity of the proceedings thereon, and, in any proceedings that may be instituted against a bankrupt who has obtained a certificate in respect of any debt from which he is released by such certificate, the bankrupt may plead that the cause of action accrued before he became bankrupt, and may give this Act and the special matter in evidence.

15 51. The certificate of conformity shall not release any person ^{Exception of joint debtors.} who at the date of the adjudication was a partner with the bankrupt, or was jointly bound, or had made any joint contract with him.

20 52. When a person who has been made a bankrupt has not obtained his certificate, then from and after the passing of the final examination, or the close of the bankruptcy, as the case may be, the following consequences shall ensue:

25 (1.) No portion of a debt provable under the bankruptcy shall be enforced against the property of the person so made bankrupt until the expiration of three years from the passing of the final examination or the close of the bankruptcy, as the case may be; and during that time if he pay to his creditors such additional sum as will, with the dividend paid out of his property during the bankruptcy, make up *five shillings* in the pound, he shall be entitled to a certificate of conformity in the same manner as if a dividend of *five shillings* in the pound had originally been paid out of his property:

30 (2.) At the expiration of a period of three years from the passing of the final examination or the close of the bankruptcy, as the case may be, if the debtor made bankrupt has not obtained a certificate of conformity, any balance remaining unpaid in respect of any debt proved in such bankruptcy (but without interest in the meantime) shall be deemed to be a subsisting debt in the nature of a judgment debt, and

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*Composition
after bank-
ruptcy.*

*Definition
of process.*

*Secured
creditor to
value his
security
before
voting.*

*Certificate
in arrange-
ment cases
to operate
as a certifi-
cate of con-
formity.*

*Revesting
of property
in arrange-
ment cases.*

subject to the rights of any persons who have become creditors of the debtor since the passing of the final examination or the close of his bankruptcy, as the case may be, may be enforced against any property of the debtor with the sanction of the Court, but to the extent only, and 5 at the time and in the manner directed by the Court, and after giving such notice and doing such acts as may be prescribed in that behalf.

53. Notwithstanding that the several requirements of the one hundred and forty-ninth and one hundred and fiftieth sections of 10 the said Act with respect to composition after bankruptcy may have been complied with, it shall be lawful for the Court to refuse to annul the adjudication, and to order that the bankruptcy shall continue, if at either of the meetings mentioned in said one hundred and forty-ninth section, or at any adjournment of either of said 15 meetings, it shall be shown that the offer of composition made by the bankrupt or his friends is not reasonable and proper to be executed under the control of the Court.

54. The word "process" in the said Act and this Act shall include an affidavit registered under the provisions of the Act thirteen 20 and fourteen of the Queen, chapter twenty-nine, and the Acts amending the same, and a debtors summons under this Act.

55. A secured creditor shall for the purpose of voting at any meeting of creditors in any arrangement or in any composition after bankruptcy under the said Act or this Act, be deemed to be a 25 creditor only in respect of the balance (if any) due to him, after deducting the value of his security; and the amount of such balance shall, until the security be realized, be determined in the prescribed manner. He may, however, at or previously to any such meeting, give up the security, and thereupon he shall rank as a creditor in 30 respect of the whole sum to him.

56. So soon as the resolution or agreement made by any arranging debtor under the said Act, as amended by this Act, shall have been carried into effect, and the creditors of such arranging debtor shall have been satisfied according to the tenor thereof, the Court 35 shall give to such arranging debtor a certificate under the seal of the Court in the form contained in the Schedule (C.) to this Act annexed, or to the like effect; and such certificate shall thenceforth operate to all intents and purposes as if the same were a certificate of conformity under a bankruptcy under the said Act as amended 40 by this Act.

57. Whenever it shall appear to the satisfaction of the Court that any trader who has presented a petition for arrangement with

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his creditors before the passing of this Act, has obtained such certificate as is mentioned in the three hundred and fifty-second section of the said Act, or that any arranging debtor has obtained such certificate as is mentioned in the last preceding section of this Act,
 5 and that there remains in the possession of, or vested in, or otherwise subject to the control of the assignees, or any trustees or trustee of such trader or arranging debtor under his arrangement, any part of the estate or effects of such trader or arranging debtor, it shall be lawful for the Court to order that the same shall be
 10 vested in the said trader or arranging debtor, his heirs, executors, administrators, or assigns, and such order shall have the effect of vesting the same accordingly.

58. Subject to the provisions of the said Act and this Act, the General power of the Court.
 Court shall have full power to decide all questions of priorities, and
 15 all other questions whatsoever, whether of law or fact, arising in any case of bankruptcy or arrangement coming within the cognisance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case; and
 20 the Court shall not be subject to be restrained in the execution of its powers under the said Act or this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in the manner directed by the said Act; and if in any proceeding in bankruptcy or arrangement there arises any question of fact which the parties
 25 desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may direct such trial to be had, and such trial may be had accordingly, before one of the judges of the said Court, in the same manner as if it were the trial of an issue in one of the superior courts of
 30 common law.

59. The Court may at any time after the presentation of a petition in bankruptcy against or by a debtor under the said Act as amended by this Act, or at any time after the presentation of a petition for arrangement under the said Act as amended by this Act,
 35 restrain further proceedings in any action, suit, or other process against the debtor in respect of any debt provable in bankruptcy or arrangement, or it may allow such proceedings, whether in progress at the time of such presentation respectively or commenced during the continuance of the bankruptcy or arrangement, to proceed upon
 40 such terms as the Court may think just.

60. Any order made by the Court under the said Act or this Act Enforcement of warrants and orders.
 shall be enforced in Scotland and England in the Courts having

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jurisdiction in bankruptcy in such countries respectively, in the same manner in all respects as if such order had been made by the Courts which are hereby required to enforce the same; and in like manner any order made by the Court in Scotland having jurisdiction in bankruptcy shall be enforced in England and Ireland, and any order made by the Court having jurisdiction in bankruptcy in England shall be enforced in Ireland and Scotland, by the Courts respectively having jurisdiction in bankruptcy, in the division of the United Kingdom where the orders made require to be enforced, and in the same manner in all respects as if such order had been made 10 by the Court required to enforce the same in a case of bankruptcy within its own jurisdiction.

Courts in
Ireland to
be auxiliary
to other
courts, &c.

61. The Court and the Courts having jurisdiction in bankruptcy in England and Scotland, and every British Court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of such Courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the Court seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by such order, the like jurisdiction 20 which the Court which made the request, as well as the Court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

Examination
of persons
in custody.

62. The Court shall have power to issue its warrant or order directed to the governor, keeper, or gaoler of any gaol wherein any bankrupt or arraigned debtor, or any person who is known or suspected to have any of the estate of the bankrupt or arraigned debtor in his possession, or who is supposed to be indebted to the bankrupt or arraigned debtor, or any person the Court may believe capable of giving information concerning the person, trade, dealings, or estate 30 of the bankrupt or arraigned debtor, shall be in custody, directing him to bring the bankrupt or arraigned debtor or any such person as aforesaid before the Court, or such officer thereof, as shall be named in such warrant or order on the day named in such warrant or order for examination; and every such governor, keeper, or 35 gaoler shall obey such warrant or order. The bankrupt, arraigned debtor, or any such person as aforesaid who shall be so brought up, shall, after his or her examination, be taken back to the gaol from which he or she was brought up, without any new or further order.

Expenses of
removal of
persons in
custody.

63. The expenses of conveying such bankrupt or arraigned debtor, or any such person as aforesaid, for such examination, shall

be paid to the keeper, gaoler, or other officer who shall bring such prisoner to and from the place where same is held, in obedience to any such rule or order of the Court out of the estate and effects of such bankrupt or arranging debtor, if the same shall be sufficient to pay such expenses, and if not, then such expenses shall be paid by the treasurer of the county, county of a city, or county of a town in the gaol of which such prisoner shall be imprisoned, as the same shall be directed by the Court or other officer before whom such prisoner shall be brought; and the grand jury of such county, 10 county of a city, or county of a town is hereby empowered and required to present the amount thereof at the assizes next ensuing the day mentioned in such rule or order, to be levied off such county, county of a city, or county of a town.

64. When the lands, houses, or tenements of any bankrupt or 15 arranging debtor have been sold by or under the direction of the Court, the Court shall have power, on the application of any purchaser, to issue an order to the sheriff of the county or city where such lands, houses, or tenements are situate, to put such purchaser into possession of all such lands, houses, or tenements not in the 20 occupation of lessees, under lessees, or tenants, subject to whose leases, under leases, or tenancies the sale shall have been made, and who shall have attorney to such purchaser within a time to be limited in such order, and such order shall be executed by the sheriff in like manner as a writ for the delivery of possession.

65. The Court may, by warrant addressed to any constable or 25 prescribed officer of the Court, cause a debtor to be arrested and safely kept as prescribed, until such time as the Court may order, if, after a debtor's summons has been granted in the manner prescribed by this Act, and before a petition of bankruptcy can be presented 30 against him, it appear to the Court that there is probable reason for believing that he is about to go abroad with a view of avoiding payment of the debt for which such summons has been granted, or of avoiding the presentation of a petition in bankruptcy against him, or of avoiding examination in respect of his affairs, or otherwise 35 avoiding, delaying, or embarrassing proceedings in bankruptcy: Provided always, that nothing herein contained shall be construed to qualify or alter the right of the debtor to apply to the Court in the prescribed manner to dismiss the said summons as in this Act is provided, or to pay, secure, or compound for the said debt within 40 the time by this Act provided, without being deemed to have committed an act of bankruptcy; and provided also, that upon any such payment or composition being made, or such security offered as the

Power of
Court to put
purchaser
into posses-
sion of lands.

Arrest of
debtor after
service of
summons.

A.D. 1871. — Court shall think reasonable, the said debtor shall be discharged out of custody, unless the Court shall otherwise order.

When arrest
not valid. — **66.** No arrest shall be valid or protected under this Act unless the debtor before or at the time of his arrest shall be served with the debtor's summons. 5

Security for
debt given
after arrest. — **67.** No payment or composition of a debt made or security for the same given after an arrest made under the provisions of this Act shall be exempted from the operation of the said Act or this Act relating to fraudulent preferences.

Court may
refer cases
to chairman
of quarter
sessions. — **68.** If any debtor who is adjudged a bankrupt after the passing 10 of this Act shall have at the time of such adjudication a fixed place of abode situated elsewhere than within the county of the city of Dublin or the county of Dublin, the Court may, if it shall think fit, upon the application within the prescribed time and in the proscribed manner of such debtor, or of any creditor of such debtor, 15 make an order referring all or any part of the proceedings under such adjudication to the chairman of quarter sessions within whose jurisdiction such debtor had a fixed abode at the time of such adjudication, and shall, if necessary, transmit the petition and schedule of such debtor to the clerk of the peace, and shall appoint 20 a time and place at any court of quarter sessions held within the jurisdiction of such chairman for the hearing and carrying on of the said proceedings, or for such part thereof as shall be so referred.

Chairman to
have same
jurisdiction
and powers
as the Court. — **69.** Any chairman to whom any such proceedings shall be so 25 referred, shall have and possess the same power and authority with respect to same, and shall make all such orders, give all such directions, and do all such matters and things with respect to the debtor, his schedule, creditors, and assignees, property, and debtors to his estate, final examination, and certificate, or as to the trial or directing 30 the prosecution of such bankrupt, or as to the examination of witnesses, as the Court might make, give, or do, in proceedings in bankruptcy heard before such Court under the said Act or this Act; and, if he shall deem fit, shall be at liberty to adjourn the hearing of all or any part of such proceedings from one session to 35 another.

Petition, &c.,
to be re-
turned by
the clerk of
the peace to
the Court. — **70.** Every such petition and schedule, and all judgments, rules, 40 orders, directions, and proceedings thereon by such chairman, shall be forthwith, or as soon as conveniently may be after such hearing or adjournment thereof as the case may be, returned by the clerk of the peace to the Court, certified by such chairman and clerk of

the peace respectively, to be a record of the Court, and to be kept as such among the records thereof, and the clerk of the peace is hereby required to return the same accordingly.

71. Every clerk of the peace shall transmit to the officer of the Court in Dublin a return of the several days for holding the quarter sessions in and for each county, forthwith, upon the appointment of the same by the chairman of each county.

72. Any person who shall be dissatisfied with the decision of the chairman upon any matter of law or fact arising in any proceedings referred to him under this Act, may appeal from the same to the Court within the prescribed time, and in the prescribed manner, and the decision of the Court in any such appeal shall be final.

73. Nothing herein contained shall extend or be construed to deprive the Court of the power of doing, prior to any hearing before such chairman of any matter referred to him as aforesaid, or pending the adjournment of any such hearing, any matter or thing relative to such debtor, his petition and schedule, property, estate, and effects, creditors, assignees, debtors to his estate, final examination, or certificate.

74. Any bankrupt or any creditor or creditors of a bankrupt whose debt or the aggregate amount of whose debts is not less than fifty pounds may within the prescribed time after adjudication and in the prescribed manner apply to the Court for an order to summon a general meeting of the creditors of the bankrupt for the purpose of obtaining their sanction to the estate of the bankrupt being wound up by a trustee and a committee of inspection, as herein-after mentioned.

75. On the hearing of such application the Court may, if it think fit, make an order to summon a general meeting of the creditors of the bankrupt, and the creditors at such meeting, or at any adjournment thereof, shall and may do as follows :

1. They may, by a special resolution as defined by this Act, declare that the estate of the bankrupt is to be wound up by a trustee and a committee of inspection :
2. They shall by resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt, at such remuneration as they may from time to time determine, if any ; or they may resolve to leave his appointment to the committee of inspection herein-after mentioned :

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Trustee
 Classes.

3. They shall, when they appoint a trustee, by resolution declare what security is to be given, and to whom, by the person so appointed, before he enters on the office of trustee :
4. They shall, by resolution, appoint some other fit persons, not exceeding five in number, and being creditors qualified to vote at such first meeting of creditors as is in this Act mentioned, or authorised in the prescribed form by creditors so qualified to vote, to form a committee of inspection for the purpose of superintending the administration by the trustee of the bankrupt's property : 10
5. They may, by resolution, give directions as to the manner in which the property is to be administered by the trustee, and it shall be the duty of the trustee to conform to such directions, unless the Court for some just cause otherwise orders. 15

*Regulations
 as to first
 meeting of
 creditors.*

76. The general meeting of creditors to be summoned as aforesaid by the Court, and in this Act referred to as the first meeting of creditors, shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum, adjournment of meeting, and all other matters relating to the conduct of the meeting or the proceedings thereof. 20

Provided that,—

1. The meeting shall be presided over by one of the registrars of the court, or, in the event of his being unable to attend through illness or any unavoidable cause, or, if the Court shall so direct, by such chairman as the meeting may elect : 25
2. A person shall not be entitled to vote as a creditor unless at or previously to the meeting he has in the prescribed manner proved a debt payable under the bankruptcy to be due to him : 30
3. A creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained : 35
4. A secured creditor shall, for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security ; and the amount of such balance shall, until the security be realized, be determined in the prescribed manner. He may, however, at or previously to the meeting of creditors, give up his security, and thereupon he shall rank as a creditor in respect of the whole sum due to him : 40
5. Votes may be given either personally or by proxy :

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Trustee
Classes.

6. An ordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting and voting on such resolution :

7. A special resolution shall be decided by a majority in number, and three-fourths in value, of the creditors present personally or by proxy at the meeting and voting on such resolution.

77. The passing of any such special resolution as aforesaid, and the appointment of a trustee, shall be reported to the Court, and thereupon the Court shall, if it think it reasonable and proper so to do, make an order that the estate of the bankrupt shall be wound up by a trustee and a committee of inspection. When making any such order the Court shall at the same time, upon being satisfied that the requisite security has been entered into by the said trustee, give him a certificate declaring him to be trustee of the bankruptcy named in the certificate; and such certificate shall be conclusive evidence of the appointment of the trustee, and such appointment shall date from the date of the certificate.

78. Upon the granting of such certificate all the estate, both real and personal, of the bankrupt shall be devested out of the official assignees, and shall be vested in the said trustee as fully as if such trustee were the assignees under any bankruptcy.

79. At the time of making any such order as aforesaid, or at any time thereafter, the Court may order to be paid out of the bankrupt's estate to the official assignee as a remuneration for his services (if any) from the date of the adjudication to the making of such order such sum or sums as shall upon consideration of the circumstances of the case appear to be just and reasonable.

80. From and after the making of any such order as aforesaid the bankrupt shall, to the utmost of his power, aid the trustee in the realization of his property and the distribution of the proceeds thereof amongst his creditors. He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference to any

A.D. 1871. particular bankruptcy, or made on the occasion of any special application by the trustee or any creditor.

Trustee
Clauses.

If the bankrupt wilfully fail to perform the duties imposed on him by this section, or if he fail to deliver up possession to the trustee of any part of his property, which is divisible amongst his creditors under this Act, and which may for the time being be in the possession or under the control of such bankrupt, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Conduct of trustee, and appeal to Court against trustee.

81. The trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall be deemed to override any directions given by the committee of inspection; the trustee shall call a meeting of the committee of inspection once at least every three months, when they shall audit his accounts, and determine whether any or what dividend is to be paid; he may also call special meetings of the said committee as he thinks necessary. 20

Subject to the provisions of this Act, and to such directions as aforesaid, the trustee shall exercise his own discretion in the management of the estate, and its distribution amongst the creditors. The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes; he may also apply to the Court, in manner prescribed, for directions in relation to any particular matter arising under the bankruptcy. 25

The bankrupt, or any creditor, debtor, or other person aggrieved by any act of the trustee, may apply to the Court, and the Court may confirm, reverse, or modify the act complained of, and make such order in the premises as it thinks just. The Court may from time to time, during the continuance of a bankruptcy, summon general meetings of the creditors for the purpose of ascertaining their wishes, and may, if the Court thinks fit, direct one of the registrars of the Court to preside at such meetings. 35

Regulations as to general meetings of creditors subsequent to first meeting.

82. The provisions of this Act with respect to the first general meeting of creditors shall apply to any subsequent general meeting of creditors in a bankruptcy, being wound up by a trustee and a committee of inspection, with this exception, that subsequent meetings of creditors may be summoned by the trustee, or by a member of the committee of inspection, and that such meetings may, unless otherwise directed by the Court in the case of meetings

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Trustee
Clauses.

summoned by the Court, be presided over by any person chosen by the creditors assembled at such meeting, and that any creditor whose debt has been proved, or the value of whose debt has been ascertained at or subsequently to such first meeting, shall be allowed 5 to be present and to vote thereto.

83. The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other property capable of manual delivery. The trustee shall keep, in such manner as rules of Court shall direct, proper books, in which he shall from time to time make or cause to be made entries or minutes of proceedings at meetings, and of such other matters as rules of Court shall direct, and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent inspect such books.

84. When any property of the bankrupt acquired by the assignees under the said Act, as amended by this Act, or by the trustee under this Act, consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the assignees or trustee, notwithstanding that they or he have or has endeavoured to sell, or have or has taken possession of such property, or exercised any act of ownership in relation thereto, may, by writing under their or his hands or hand, disclaim such property, and upon the execution of such disclaimer, the property disclaimed shall, if the same is a contract, be deemed to be determined from the date of the order of adjudication, and if the same is a lease, be deemed to have been surrendered on the same date, and if the same he shares in any company, be deemed to be forfeited from that date, and if any other species of property, it shall revert to the person entitled on the determination of the estate or interest of the bankrupt, but if there shall be no person in existence so entitled, then in no case shall any estate or interest therein remain in the bankrupt. Any person interested in any disclaimed property may apply to the Court, and the Court may, upon such application, order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just.

Any person injured by the operation of this section shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy.

A.D. 1871.

Trustee
Classes.Limitation
of time for
disclaimer.Power of
trustee to
receive and
decide on
proof of
debts.Power to
allow bank-
rupt to
manage
property.Power of
trustee to
compromise,
etc.

85. The assignees or trustee shall not be entitled to disclaim any property in pursuance of this Act in cases where an application in writing has been made to them or him by any person interested in such property, requiring such assignees or trustee to decide whether they or he will disclaim or not, and the assignees or trustee have 5 or has for a period of not less than twenty-eight days after the receipt of such application, or such further time as may be allowed by the Court, declined or neglected to give notice whether he disclaims the same or not.

86. Subject to the provisions of this Act, the trustee shall have 10 power to receive and decide upon proof of debts in the prescribed manner, and for such purpose to administer oaths.

87. The trustee may appoint the bankrupt himself to superintend the management of the property, or of any part thereof, or to carry on the trade of the bankrupt (if any) for the benefit of the creditors, 15 and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct.

88. The trustee may, with the sanction of the committee of inspection, do all or any of the following things:—

1. Mortgage or pledge any part of the property of the bankrupt 20 for the purpose of raising money for the payment of his debts :
2. Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to 25 subsist between the bankrupt and any debtor or person who may have incurred any liability to the bankrupt, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon :
3. Make such compromise or other arrangement as may be 30 thought expedient with creditors or persons claiming to be creditors in respect of any debts provable under the bankruptcy :
4. Make such compromise or other arrangement as may be 35 thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person :
5. To divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar 40

A.D. 1871.

*Trustee
Classes.*

nature or other special circumstances cannot advantageously be realized by sale.

The sanction given for the purposes of this section may be a general permission to do all or any of the above-mentioned things or a permission to do all or any of them in any specified case or cases.

89. The trustee may, with the sanction of a special resolution of the creditors assembled at any meeting of which notice has been given specifying the object of such meeting, accept any composition offered by the bankrupt, or assent to any general scheme of settlement of the affairs of the bankrupt upon such terms as may be thought expedient, and with or without a condition that the order of adjudication is to be annulled, subject nevertheless to the approval of the Court, to be testified by the judge of the Court signing the instrument containing the terms of such composition or scheme, or embodying such terms in an order of the Court.

Where the annulling the order of adjudication is made a condition of any composition with the bankrupt or of any general scheme for the liquidation of his affairs, the Court, if it approves of such composition or general scheme, shall annul the adjudication on an application made by or on behalf of any person interested, and the adjudication shall be annulled from and after the date of the order annulling the same.

The provisions of any composition or general scheme made in pursuance of this Act may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed to be a contempt of Court. The approval of the Court shall be conclusive as to the validity of any such composition or scheme, and it shall be binding on all the creditors so far as relates to any debts due to them and provable under the bankruptcy.

90. A trustee shall not, without the consent of the committee of inspection, employ a solicitor or other agent, but where the trustee is himself a solicitor he may contract to be paid a certain sum by way of per-centaige or otherwise as a remuneration for his services as trustee, including all professional services, and any such contract shall, notwithstanding any law to the contrary, be lawful.

91. The trustee shall pay all sums from time to time received by him into such bank as the majority of the creditors in number and value at any general meeting shall appoint, and failing such appointment into the Bank of Ireland; and if he at any time keep in his hands any sum exceeding fifty pounds for more than ten

[109.]

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*Trustees to
pay money
into bank.*

A.D. 1871. days, he shall be subject to the following liabilities; that is to say,—

- Trustee
Clauses.
- (1.) He shall pay interest at the rate of *twenty pounds* per centum per annum on the excess of such sum above *fifty pounds* as he may retain in his hands: 5
 - (2.) Unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient, he shall, on the application of any creditor, be dismissed from his office by the Court, and shall have no claim for remuneration, and be liable to any expenses to which 10 the creditors may be put by or in consequence of his dismissal.

Proof of
debts before
trustee.

92. All debts provable in bankruptcy under the said Act or this Act may be proved in the prescribed manner before the trustee, and the several provisions of the said Act and this Act as to the proof 15 and ascertainment of debts, and the nature, amount, and relative priorities of same, shall extend and be applicable to all debts which shall be proved before such trustee.

An estimate shall be made according to the rules of the Court for the time being in force, so far as the same may be applicable, and 20 when they are not applicable at the discretion of the trustee, of the value of any debt, provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

Any person aggrieved by any estimate made by the trustee as 25 aforesaid may appeal to the Court, and the Court may thereupon ascertain such value, or direct such value to be assessed in the manner provided by the said Act or this Act.

Allotment to
bankrupt for
maintenance
or service.

93. The trustee, with the consent of the creditors, testified by a resolution passed in general meeting, may from time to time, during 30 the continuance of the bankruptcy, make such allowance as may be approved by the creditors to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate.

Distribution
of dividends.

94. The trustee shall from time to time, when the committee of 35 inspection determines, declare a dividend amongst the creditors who have proved to his satisfaction debts provable in bankruptcy, and shall distribute the same accordingly; and in the event of his not declaring a dividend for the space of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not 40 declaring the same.

95. In the calculation and distribution of a dividend it shall be obligatory on the trustee to make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined.

A.D. 1871.
Trustee
Classes.
Provision
for creditors
resident at
a distance,
&c.

96. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any moneys for the time being in the hand of the trustee any dividend or dividends he may have failed to receive before such moneys are made applicable to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

97. When the trustee has converted into money all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, he realized without needlessly protracting the bankruptcy, he shall declare a final dividend, and give notice of the time at which it will be distributed.

98. The bankrupt shall be entitled to any surplus remaining after payment of his creditors, and of the costs, charges, and expenses of the bankruptcy.

99. No action or suit for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend, the Court may, if it thinks fit, order the trustee to pay the same, and also to pay out of his own moneys interest thereon for the time that it is withheld, and the costs of the application.

100. When the whole property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can, in the joint opinion of the trustee and committee of inspection, be realized without needlessly protracting the bankruptcy, or a composition or arrangement has been completed, the trustees shall make a report accordingly to the Court, and the Court, if satisfied that the whole of the property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can be realized without needlessly protracting the bankruptcy, or that a composition or arrangement has been completed, shall make an order that the bankruptcy has closed, and the bankruptcy shall be deemed to have closed at and after the date of such order.

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Trustee
ClassicsRelease of
trustee.

A copy of the order closing the bankruptcy may be published in the *Duhlin Gazette*, and the production of a copy of such gazette containing a copy of the order, shall be conclusive evidence of the order having been made, and of the date and contents thereof.

101. When the bankruptcy is closed the trustee shall call a meeting of the creditors to consider an application to be made to the Court for his release. At the meeting the trustee shall lay before the assembled creditors an account showing the manner in which the bankruptcy has been conducted, with a list of the unclaimed dividends, if any, and of the property, if any, outstanding, and shall inform the meeting that he proposes to apply to the Court for a release.

The creditors assembled at the meeting may express their opinion as to the conduct of the trustee, and they, or any of them, may appear before the Court, and oppose the release of the trustee. 15

The Court, after hearing what, if anything, can be urged against the release of the trustee, shall grant or withhold the release accordingly, and if it withhold the release, shall make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty, and shall suspend his release until such charging order has been complied with, and the Court thinks just to grant the release of the trustee.

Duty of
trustee as to
unclaimed
dividends
and out-
standing
property.

102. Unclaimed dividends, and any other moneys arising from the property of the bankrupt, remaining under the control of the trustee at the close of the bankruptcy of any bankrupt, or accruing thereafter, shall be accounted and paid over to the "unclaimed dividend account," in the same manner in all respects as if same were unclaimed dividends in a bankruptcy under the said Act; and same shall be subject to the like orders, and be applied for the same purposes as are mentioned in the said Act. The trustee shall also deliver a list of any outstanding property of the bankrupt to the prescribed persons, and the same shall, when practicable, be got in and applied for the benefit of the creditors in manner prescribed. 25

Effect of
release of
trustee.

103. The order of the Court releasing the trustee of a bankruptcy shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee of such bankrupt; but such order may be revoked by the Court on proof that it was obtained by fraud. 35

Certified
statement of
accounts to

104. The trustee having had his quarterly statement of accounts audited by the committee of inspection, shall, within the prescribed 40

time, forward the certified statement in the prescribed form to such officer of the Court as the Court may from time to time direct.

105. Every trustee of a bankrupt shall from time to time, as may be prescribed, and not less than once in every year during the bankruptcy, transmit to such officer a statement showing the proceedings in such bankruptcy up to the date of the statement containing the prescribed particulars, and made out in the prescribed form; and any trustee failing to transmit accounts in compliance with this section shall be deemed guilty of a contempt of Court, and be punishable accordingly.

106. The officer to whom the said statements shall be transmitted shall examine same, and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on such statements, and may require the trustee to make good any loss the estate of the bankrupt may have sustained by such misfeasance, neglect, or omission. If the trustee fail to comply with such requisition of such officer, such officer may report the same to the Court; and the Court, after hearing the explanation, if any, of the trustee, shall make such order in the premises as it thinks just.

107. The said officer may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which such trustee is engaged, and may, if he think fit, apply to the Court to examine on oath such trustee or any other person concerning such bankruptcy; he may also direct a local investigation to be made of the books and vouchers of the trustees.

108. The following regulations shall be made with respect to the *Regulations as to trustees, &c.* trustees and committee of inspection:

1. The creditors may, if they think fit, appoint more persons than one to the office of trustee, and where more than one are appointed, they shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the bankrupt. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee;

2. If any vacancy occur in the office of trustee by death, resignation, or otherwise, the creditors in general meeting shall fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing

[109.]

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*Trustee
Chancery.*

*to be forwarded
to Court.
Return of
accounts by
trustee.*

*Accounts to
be examined.*

*Powers of
officer to
whom ac-
counts are
transmitted.*

Regulations as to trustees, &c.

A.D. 1871.

Trustee
Classes.

trustee, if there be more than one, or by the Court on the requisition of any creditor:

3. If, through any cause whatever, there is no trustee acting during the continuance of a bankruptcy, one of the registrars of the Court shall act as such trustee: 5
4. The Court may, upon cause shown, remove any trustee. The creditors may, by special resolution at a meeting specially called for that purpose, of which seven days notice has been given, remove the trustee and appoint another person to fill his office, and the Court shall give a certificate declaring him 10 to be the trustee:
5. If a trustee be adjudged bankrupt, he shall cease to be trustee, and the Court shall, if there be no other trustee, call a meeting of creditors for the appointment of another trustee in his place: 15
6. The property of the bankrupt shall pass from trustee to trustee, including under that term the registrar when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever: 20
7. The trustee of a bankrupt may sue and be sued by the official name of "the trustee of the property of a bankrupt," inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding upon 25 himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office:
8. The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions 30 requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly:
9. Any member of the committee of inspection may resign his 35 office by notice in writing signed by him, and delivered to the trustee:
10. The creditors may by resolution fix the quorum required to be present at a meeting of the committee of inspection:
11. Any member of the committee of inspection may also be 40 removed by a special resolution at any meeting of creditors of which the prescribed notice has been given, stating the object of the meeting:

12. On any vacancy occurring in the office of a member of the committee of inspection by removal, death, resignation, or otherwise, the trustee shall convene a meeting of creditors for the purpose of filling up such vacancy : A.D. 1871.
Trustee
Chancery
- 5 13. The continuing members of the committee of inspection may act, notwithstanding any vacancy in their body ; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five :
- 10 14. No defect or irregularity in the election of a trustee or of a member of the committee of inspection shall vitiate any act bona fide done by him ; and no act or proceeding of the trustee or of the creditors shall be invalid by reason of any failure of the creditors to elect all or any members of the committee of inspection :
- 15 15. If a member of the committee of inspection become a bankrupt his office shall thereupon become vacant :
- 20 16. Where there is no committee of inspection, any act or thing or any direction or consent by this Act authorized or required to be done or given by such committee may be done or given by the Court on the application of the trustee,
- 109.** Where an order is made for winding up the bankrupt's estate by a trustee and committee of inspection, the Court shall, notwithstanding such order, but subject to the provisions and 25 restrictions aforesaid, have the same powers and authorities and may make such orders, give such directions, and do all such matters and things with respect to the bankrupt, his schedule, creditors, property, debtors to his estate, and certificate, or as to the trial or directing the prosecution of such bankrupt, or as to the examination of 30 witnesses as in proceedings in bankruptcy heard before such Court under the said Act as amended by this Act. Court to have jurisdiction notwithstanding order to wind up by trustee, &c.

- 110.** Any person who shall, upon any examination upon oath or affirmation, or in any affidavit, deposition, or declaration, or solemn affirmation, authorised or directed by the said Act as amended by this Act, or by this Act, wilfully and corruptly give false evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the penalties of wilful and corrupt perjury. Penalty on persons giving false evidence.

- 111.** The judges of the Court shall, on or before the first day of January one thousand eight hundred and seventy-two, and from time to time thereafter, make such general orders as they may think fit for the effectual execution of this Act, and of the objects thereof. General orders to be made.

A.D. 1871. and may from time to time alter or revoke such orders, but no such general orders shall be of any force or effect until approved of by the Lord Chancellor.

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*Trustee
Chancery.*

Any general rules made as aforesaid may prescribe regulations as to the service of summonses and orders, including provisions 5 for substituted service; as to the valuing of any debts provable in a bankruptcy; as to the valuation of securities held by creditors; as to the giving or withholding interest or discount on or in respect of debts or dividends; as to the funds out of which costs are to be paid, the order of payment, and the amount and taxation thereof; 10 and as to any other matter or thing, whether similar or not to those above enumerated, in respect to which it may be expedient to make rules for carrying into effect the objects of this Act; and any rules so made shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted 15 in the body of this Act.

Any rules made in pursuance of the section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting; and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament, 20 and any rules so made shall be judicially noticed.

Until rules have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which courts having jurisdiction in bankruptcy in Ireland have heretofore acted in dealing with bankruptcy proceedings shall be 25 observed by any Court having jurisdiction in bankruptcy cases under this Act.

A.D. 1871.

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Sections of the Irish Bankrupt and Insolvent Act, 1857, repealed.

- Sections 50, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104,
5 105, 106, 107, 108, 109, 110, 111, 112, 113, 117, 133, 134, 141, 143, 144, 145,
148, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192,
193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208,
209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224,
225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240,
10 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263.

SCHEDULE (B)

Certificate of Conformity.

Court of Bankruptcy in Iceland.

- 15 In the matter of } WHEREAS the said A.B. of was on the
A.B. day of duly adjudged and declared a bankrupt,
of and the said bankrupt has made a full disclosure and
a bankrupt. discovery of his estate and effects and in all things conformed,
and so far as the Court can judge there doth not appear any reason to question
the truth or fulness of such discovery.

Now this is to certify that on the day of in the
year of our Lord one thousand eight hundred and at the Court
of Bankruptcy in Dublin at a public sitting held for the allowance of this
certificate to the said bankrupt and having regard to the conformity of the said
bankrupt to the law of bankruptcy [and to his conduct as a trader before as
well after his bankruptcy]* the Court did then and there find the said bank-
rupt entitled to such certificate and did allow the same.

Given under the seal of the Court at the Court of Bankruptcy in
Ireland this day of one thousand
30 eight hundred and .

Signed and sealed in the presence of

A.B. (L.S.)
Judge.

* In the case of a non-trader the portion between brackets is to be omitted.

A.D. 1871.

SCHEDULE (C.)

Certificate to arranging Debtor.

Court of Bankruptcy in Ireland.

WHEREAS A.B. of _____, a debtor, unable to meet his engagements with his creditors, did on the _____ day of _____ present his petition to the Court under the provisions of "The Irish Bankrupt and Insolvent Act, 1857" and "The Bankruptcy (Ireland) Amendment Act, 1871," praying that a certain proposal or such modification thereof as by three-fifths in number and value of his creditors might be determined should be carried into effect, under the superintendence and control of the said Court; and whereas the Court acting in the matter of the said petition caused such sittings of the Court to be held as are directed by the said Acts; and whereas a certain resolution or agreement was duly assented to at such sittings which the Court thinking to be reasonable and proper to be executed under the direction of the said Court caused to be filed and entered of record therein; and whereas the said resolution or agreement has been fully carried into effect, the Court doth certify the several matters aforesaid, this _____ day of
18

A.B. (I.A.S.)
Judge. 20

Bankruptcy Ireland
Amendment.

A

B I L L

For the amendment of the Law of
Bankruptcy in Ireland.

(Prepared and brought in by
Mr. Solicitor-General for Ireland and the
Marquis of Hastings.)

Ordered, by The House of Commons, to be Printed,
4 April 1871.

[Bill 109.]

Under 5 os.